



Federal Communications Commission
Washington, D.C. 20554

October 21, 2005

DA 05-2743

Released: October 21, 2005

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Libco, Inc.
WWAY(TV)
2215 B Renaissance Drive
Suite 5
Las Vegas, Nevada 89119

Re: Libco, Inc.
WWAY(TV), Wilmington, North Carolina
Facility ID No. 12033
File No. BRCT-20040802BBB

Dear Licensee:

This refers to your license renewal application for station WWAY(TV), Wilmington, North Carolina.

In the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394, Congress directed the Commission to adopt rules, *inter alia*, limiting the amount of commercial matter that television stations may air during children's programming, and to consider in its review of television license renewals the extent to which the licensee has complied with such commercial limits. Accordingly, the Commission adopted Section 73.670 of the Commission's Rules (Rules), 47 C.F.R. § 73.670, which limits the amount of commercial matter which may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991). The commercial limitations became effective on January 1, 1992. *Children's Television Programming*, 6 FCC Rcd 5529, 5530 (1991).

Moreover, Section 73.3526 of the Rules requires broadcast licensees to maintain a public inspection file containing specific types of information related to station operations.¹ As set forth in Section 73.3526(e)(11)(iii) of the Rules, each commercial television broadcast station is required to prepare and place in its public inspection file a Children's Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts it has made during the quarter to serve the educational needs of children. Section 73.3526 of the Rules also

¹ See 47 C.F.R. § 73.3526.

requires commercial television stations to file the reports with the Commission and to publicize the existence and location of the reports. Moreover, pursuant to Section 73.3526(e)(11)(ii) of the Rules, each commercial television broadcast station is required to place in its public inspection file on a quarterly basis, records sufficient to allow substantiation of the licensee's certification in its renewal application, of compliance with the children's television commercial limits. Section 73.3526(e)(11)(i) provides that a TV issues/programs list is to be placed in a commercial TV broadcast station's public inspection file each calendar quarter. Section 73.3526 also requires licensees to place records concerning commercial limits, Children's Television Programming Reports, and TV issues/programs lists for each calendar quarter in the public inspection file by the tenth day of the succeeding calendar quarter. Where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.²

On August 2, 2004, you filed a license renewal application (FCC Form 303-S) for station WWAY(TV), Wilmington, North Carolina (File No. BRCT-20040802BBB). In response to Section IV, Question 3 of that application, you certify that, during the previous license term, station WWAY(TV) failed to place in its public inspection file at the appropriate times, all of the documentation required by Section 73.3526 of the Commission's Rules. In Exhibit 17 to station WWAY(TV)'s renewal application, you indicate that after the first and second quarters of 2001, station WWAY(TV) placed in its public inspection file its quarterly TV issues/programs lists two days and one day late, respectively. In addition, you report that station WWAY(TV) filed with the Commission, or placed in its public inspection file, its Children's Television Programming Reports between one and twelve days late for the second, third, and fourth quarters of 1999, the fourth quarter of 2000, and the first, second, and fourth quarters of 2001. Further, you indicate that station WWAY(TV) placed in its public inspection file evidence of compliance with the commercial limits in children's programming between one and twelve days late for the third quarter of 1999, the fourth quarter of 2000, and the first, second, and fourth quarters of 2001. Moreover, you state that for the fourth quarter of 2003 and the first quarter of 2004, the station's Children's Television Programming Reports and evidence of compliance with the commercial limits in children's programming were placed in the public inspection file late. The licensee attributes all of the above described violations to inadvertent administrative oversights and recounts corrective measures to ensure future compliance.

The public inspection file rule serves the critical function of making available to the public in a timely fashion important information related to station operations. Admittedly, you were lax in placing various reports and records in WWAY(TV)'s public inspection file. Although we do not rule out more severe sanctions for violations of this nature in the future, we have determined that an admonition is appropriate at this time. Therefore, based upon the facts and circumstances before us, we **ADMONISH** you for the admitted violations of Sections 73.3526(e)(11)(i)-(iii) of the Rules described in station WWAY(TV)'s renewal application. We remind you that the

² See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

Commission expects all commercial television licensees to comply with the Commission's rules regarding material to be timely included and retained in the public inspection file.

In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 309(k). Section 309(k) provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Communications Act or the Commission's Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.³ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”⁴

On balance, we find that Libco, Inc.'s violation of Section 73.3526 does not constitute a “serious violation” of the Commission's rules warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse. Further, we find that station WWAY(TV) served the public interest, convenience, and necessity during the subject license term.

Accordingly, IT IS ORDERED that, a copy of this Letter shall be sent by First Class and Certified Mail, Return Receipt Requested to Libco, Inc. at the address listed above, and to its counsel, Kevin P. Latek, Esquire, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, N.W., Suite 800, Washington, D.C. 20036.

³ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Order, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

⁴ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

Finally, IT IS ORDERED that, the application of Libco, Inc. for renewal of license for station WWAY(TV), Wilmington, North Carolina (BRCT-20040802BBB), IS HEREBY GRANTED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau